

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA)
FOR THE USE AND BENEFIT OF FHWA I-564)
JACOBS/STANTEC, A JOINT VENTURE,)
5701 Cleveland Street)
Suite 200)
Virginia Beach, VA 23462)

Plaintiff,)

Case No. 2:22-cv-44

v.)

TRAVELERS CASUALTY & SURETY)
COMPANY OF AMERICA,)
One Tower Square)
Hartford, CT 06183)

SERVE:)

Corporation Service Company)
100 Shockoe Slip Fl 2)
Richmond, VA 23219-4100)

ZURICH AMERICAN INSURANCE COMPANY,)
1299 Zurich Way)
Schaumburg, IL 60196)

SERVE:)

Corporation Service Company)
100 Shockoe Slip Fl 2)
Richmond, VA 23219-4100)

FIDELITY AND DEPOSIT COMPANY OF)
MARYLAND,)
1400 American Lane)
Schaumburg, IL 60196)

SERVE:)

Corporation Service Company)
100 Shockoe Slip Fl 2)
Richmond, VA 23219-4100)

LIBERTY MUTUAL INSURANCE COMPANY,)
175 Berkley Street)
Boston, MA 02116)
)
SERVE:)
)
Corporation Service Company)
100 Shockoe Slip Fl 2)
Richmond, VA 23219-4100)
)
and)
)
FEDERAL INSURANCE COMPANY,)
202 Halls Mill Road)
Whitehouse Station, NJ 08889)
)
SERVE:)
)
)
CT Corporation System)
4701 Cox Road, Suite 285)
Glen Allen, VA 23060-0000)
)
Defendants.)
_____)

COMPLAINT

Plaintiff United States of America for the use and benefit of FHWA I-564 Jacobs/Stantec, a Joint Venture (“Jacobs/Stantec”), by and through its undersigned counsel, hereby files this Complaint against Defendants Travelers Casualty & Surety Company of America (“Travelers”), Zurich American Insurance Company (“Zurich”), Fidelity and Deposit Company of Maryland (“Fidelity”), Liberty Mutual Insurance Company (“Liberty”), and Federal Insurance Company (“Federal”) (collectively, “Sureties”) and in support thereof, states the following:

PARTIES

1. Jacobs/Stantec is a joint venture consisting of Jacobs Engineering Group Inc., a Delaware corporation with its principal office in Dallas, Texas and Stantec Consulting Services Inc., a New York corporation with its principal office in Broomfield, Colorado.

2. Travelers is a Connecticut corporation with its principal office in Hartford, Connecticut. Travelers is registered to conduct business in Virginia.

3. Zurich is a New York corporation with its principal office in Schaumburg, Illinois. Zurich is registered to conduct business in Virginia.

4. Fidelity is an Illinois corporation with its principal office in Schaumburg, Illinois. Fidelity is registered to conduct business in Virginia.

5. Liberty is a Massachusetts corporation with its principal office in Boston, Massachusetts. Liberty is registered to conduct business in Virginia.

6. Federal is an Indiana corporation with its principal office in Whitehouse Station, New Jersey. Federal is registered to conduct business in Virginia.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to the Miller Act, 40 U.S.C. § 3133(b)(1).

8. Venue is proper in this judicial district under 40 U.S.C. § 3133(b)(3)(B) because the Project was performed in Virginia and the Sureties jointly issued a payment bond to secure payment for that work.

9. Venue is also proper under 28 U.S.C. § 1391, in that a substantial part of the events giving rise to the claims at issue in this case took place in this judicial district.

RELEVANT FACTS

10. Cherry Hill Construction, Inc. (“Cherry Hill”) was the Design/Builder, pursuant to a prime contract with the United States Department of Transportation Federal Highway Administration, Eastern Federal Lands Highway Division, for the design and construction of the I-564 Intermodal Connector in Norfolk, Virginia (“Project”).

11. On February 20, 2014, the Sureties jointly issued a payment bond bearing the numbers 106041936 (Travelers), 9116996 (Zurich/Fidelity), 024041948 (Liberty), and 82332365 (Federal) to Cherry Hill, as principal, for the penal sum of \$92,488,000.00 (“Bond”).

12. Jacobs/Stantec and Cherry Hill entered a contract for professional services for the Project (“Subagreement”), in which Jacobs/Stantec agreed to provide the “Basic and Additional Services” set forth therein and the exhibits thereto.

13. In exchange for Jacobs/Stantec’s services under the Subagreement, Cherry Hill originally agreed to pay Jacobs/Stantec a lump sum amount of \$7,991,475 for the “Basic Services,” specified hourly rates for the “Additional Services,” and “Reimbursable Expenses.”

14. Jacobs performed certain additional and extended services under the Subagreement, including the following: additional work relating to Ramp A; additional shop drawing review outside of contract; additional electrical Quality Control/Services During Construction; additional support for port opening milestone; resurvey of parcel 102; excessive non-conformance report (NCR) reviews; redesign of 18’ fence and MSE wall due to vendor error; additional design of ITS; redesign of Hampton Boulevard drainage; redesign of jack and bore due to construction errors; re-evaluation of project-wide asphalt paving, curbs, tie ins, etc., due to survey error; re-evaluation of security wall at Gate 6 due to defective construction; revised bridge abutment construction sequence; redesign of CVIS pavement/reinforcement; and excessive utility permit application/resolution due to construction; and other extended services, including, but not limited to, Quality Control services and Engineering Services During Construction.

15. Jacobs/Stantec satisfactorily completed all of its obligations under the Subagreement.

16. For its work on the Project, Jacobs/Stantec remains due and owed \$7,646,557, which Cherry Hill has failed to pay.

17. The Sureties, as Sureties on the Bond and pursuant to the Miller Act, are jointly and severally liable to Jacobs/Stantec for all amounts that Cherry Hill owes under the Subagreement.

18. Jacobs/Stantec fully complied with all conditions precedent for recovery under the Miller Act because Jacobs/Stantec was a subcontractor to Cherry Hill, the principal on the Bond, and Jacobs/Stantec has commenced this lawsuit more than 90 days and less than one (1) year after Jacobs/Stantec performed the last of the labor and furnished or supplied the material for which this claim is made.

19. Jacobs/Stantec is entitled to judgment against the bond in the amount of \$7,646,557, plus interest, costs, and attorneys' fees.

WHEREFORE, the United States of America, for the use and benefit of Jacobs/Stantec, demands judgment against Travelers, in the sum of at least \$7,646,557, plus interest, costs, attorneys' fees, and whatever other relief this Court deems appropriate.

Date: January 28, 2022

Respectfully submitted,

/s/ Amy E. Garber

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*Counsel for Plaintiff
United States of America for the use and
benefit of FHWA I-564 Jacobs/Stantec, a
Joint Venture*